

Mississippi PERS v. Indymac - Prominent Pension Funds Band Together to Support Amicus Curiae Brief in the U.S. Supreme Court

May 29, 2014

With broad support from the institutional investor community, an *amicus curiae* ("friend of the Court") brief was filed yesterday with the U.S. Supreme Court in *Public Employees' Retirement System of Mississippi v. IndyMac MBS, Inc.* The brief - which was supported by more than forty public and private pension funds from throughout the United States, Canada, the United Kingdom and the Netherlands with collective assets under management exceeding \$1.5 trillion - details the severe adverse consequences to institutional investors (and the court system as a whole) of overturning the class action or "American Pipe" tolling doctrine.

For over forty years, investors have relied on the filing of class action cases to preserve the timeliness of their claims for recovery of securities fraud damages. The *amicus* brief expresses the strong support of the pension fund community for continued application of the *American Pipe* tolling rule to both the "limitations" and "repose" periods for claims brought under the U.S. federal securities laws. In addition, the *amicus* brief emphasizes the importance of private securities class actions to the interests of long-term institutional investors.

Available [here](#), the brief was prepared by James A. Feldman, a highly experienced Supreme Court practitioner, in consultation with BLB&G and counsel to Mississippi PERS, the petitioner in *IndyMac*.

U.S. Supreme Court to Weigh in on Long Established Doctrine

Since the Supreme Court's 1974 decision in *American Pipe*, investors have been able to rely on the commencement of a securities class action to protect and preserve the timeliness of their claims for recovery of securities fraud damages until the court decided whether to grant the case class action status. For four decades, it has been understood in the lower courts that the *American Pipe* rule applied to both the three-year period applicable to claims brought under Sections 11 and 12 of the Securities Act of 1933 for material misrepresentations in connection with public securities offerings, as well as the corresponding five-year period applicable to claims brought under Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 for fraud in connection with open market purchases and other types of securities fraud.

In 2013, the U.S. Court of Appeals for the Second Circuit upset this settled law by holding that *American Pipe* does not apply to the three-year period applicable to claims brought under Sections 11 and 12 of the Securities Act.

In *IndyMac*, the Court will decide whether the filing of a class action within three years after a security was offered or sold to the public satisfies, under *American Pipe*, the Securities Act's three-year time period with respect to the claims of prospective class members.

What's at Stake for Investors

The practical effect of this ruling, if it is not reversed by the Supreme Court, will be that:

- Investors will have to monitor closely the progress of class certification in each case in which they have a significant financial interest (as well as other developments that may impact their claims) because they can no longer rely on the filing of a class action to preserve their claims;

- Investors will need to retain counsel and file their own individual actions, or move to intervene in the class action, to avoid losing their right to recover for violations of the federal securities laws in the large number of cases in which class certification may not be decided until after the applicable periods for asserting new claims has run; and
- Investors would lose the ability in nearly all cases to wait until a settlement is reached to decide whether or not to opt out of the class in order to seek a greater recovery of their losses, and would be forced to decide whether to opt out much earlier without any ability to assess whether the class settlement provides adequate compensation.

Oral argument before the Supreme Court is expected to be held in early to mid-October, with a decision following in the Spring of 2015.

The complete list of pension funds supporting the *amicus curiae* brief is below.

The Amici Curiae

- Alameda County Employees' Retirement Association
- APG Asset Management N.V.
- Arkansas Public Employees Retirement System
- Automotive Industries Pension Trust Fund
- California Public Employees' Retirement System
- California State Teachers' Retirement System
- Cambridge Retirement System
- Carpenters Pension Trust Fund for Northern California
- Carpenters Annuity Trust Fund for Northern California
- City of Atlanta Firefighters' Pension Fund
- City of Dania Beach Police & Firefighters' Retirement System
- Colorado Public Employees' Retirement Association
- Dallas Police & Fire Pension System
- Denver Employees Retirement Plan
- Florida's State Board of Administration
- Government of Guam Retirement Fund
- Houston Firefighters' Relief and Retirement Fund
- Houston Municipal Employees Pension System
- Illinois Municipal Retirement Fund
- Maryland State Retirement and Pension System
- MN Services N.V.
- Montana Board of Investments
- New York State Common Retirement Fund
- OMERS Administration Corporation
- Operating Engineers Pension Trust
- Orange County Employees Retirement System
- Pension Reserves Investment Management Board of Massachusetts
- PGGM Investments
- Public School Teachers' Pension and Retirement Fund of Chicago
- The Regents of the University of California
- Rockledge Firefighters', Rockledge General Employees' & Rockledge Police Officers' Retirement Plans

- Royal Mail Pension Plan
- Sacramento County Employees' Retirement System
- San Diego City Employees' Retirement System
- Santa Barbara County Employees' Retirement System
- State of Wisconsin Investment Board
- Teacher Retirement System of Texas
- Utah Retirement Systems
- Virginia Retirement System
- Washington State Investment Board